*THE HONOURABLE SRI JUSTICE C.V.NAGARJUNA REDDY

+W.P. NO.13789 OF 1996

%23.2.2007

#K.L.Narsimham

..Petitioner

Vs.

$The Presiding Officer,
Labour Court-I, Hyderabad.
and others . Respondents.

!Counsel for the Petitioner : Sri W.B.Srinivas.

^Counsel for the Respondent No.2: Sri V.S.K.Rama Rao, for
Sri V.T.M.Prasad. Standing Counsel

<Gist :

>Head Note:

?Cases Referred:
1.(1991) 1 SCC 504
2.AIR 1967 SC 1269
3.1969(2) SCC 262
4.(1978) 1 SCC 248

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.13789 of 1996

Dated: 23.2.2007

Between:

K.L.Narsimham

… Petitioner

AND

The Presiding Officer,
Labour Court-I,
Hyderabad.

And others.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.13789 of 1996

ORDER:-

This writ petition is filed by the Regional Secretary, National Mazdoor Union, Andhra Pradesh State Road Transport Corporation (for short 'the Corporation') questioning the award of the Labour Court in I.D.No.115 of 1994 dated 27.12.1995 whereby it has upheld the action of the Divisional Manager, Charminar Division in imposing the punishment of reducing the pay of two incremental stages of Sri Madusudhan, Mechanic (E/38311) for a period of two years having the effect of postponement of his future increments.

While Sri Madusudhan was working as mechanic in Musheerabad Depot, he was served with a charge sheet consisting of two charges, which read as under:

> "1. For having unauthorisedly entered the premises of the depot at 00.30 hours on 11/12-10-1987 and in an intoxicated condition on plea to collect the keys and medicines, which constitutes misconduct and amounts to violation of Regulation (viii) of A.P.S.R.T.C. Employees (Conduct) Regulation 1963.
>
> 2. For having picked up arguments with shift supervisor Assistant Mechanical Foreman, abusing him, using un-parliamentary language at the unauthorized time (i.e., 00.30 hours which time you were not on duty) which constitute insubordination and amounts to violation of Regulation 28 (viii) of A.P.S.R.T.C.Employees (Conduct) Regulation 1963."

The framing of charge was preceded by preliminary enquiry conducted by Chief Inspector, Barkatpura. A show cause notice was issued on 26.2.1988 and in response to the same the delinquent employee filed his explanation on 1.4.1988. The third respondent – Depot Manager, Musheerabad passed a final order on 22.4.1988 whereby the punishment of reduction of two incremental stages for a period of four years was imposed. Against the said order, the petitioner union filed an appeal before the second respondent, who by an order dated 29.6.1991, while confirming the findings of the third respondent, modified the penalty imposed on Sri Madhusudhan by limiting the reduction of two incremental stages for a period of two years. Feeling aggrieved by the said order the petitioner union moved the Labour Court-I, which, as already mentioned by its order dated 27.12.1995 declined to interfere with the orders passed by respondent No.2. The present writ petition is therefore, filed questioning the said award of the Labour Court.

Heard Sri W.B.Srinivas learned counsel for the petitioner and Sri V.S.K.Rama Rao, counsel representing Sri V.T.M.Prasad,

learned Standing Counsel for the Corporation.

Learned counsel for the petitioner submitted that the order passed by the respondent No.3 and confirmed by respondent No.2 with modification is in violation of principles of natural justice, and that, though the (Classification, Control and Appeal) Regulations of the Corporation included "withholding of increments" in the category of minor penalties, which do not require holding of an enquiry, in view of the law settled by Supreme Court in **Kulwant Singh Gill vs State of Punjab**[1], the punishment of withholding of increments with cumulative effect shall be treated as major penalty which requires holding of enquiry before order of punishment is imposed. The learned counsel further submitted that the orders of respondents 3 and 2 suffer from absence of any reasons whatsoever which are sine qua non for a valid order, more so when the employee is visited with adverse civil consequences. The learned counsel further submitted that the Labour Court having taken note of the averments in the counter affidavit filed before it by the Corporation wherein it candidly admitted that no domestic enquiry was conducted, however recorded a finding that enquiry was conducted in pursuance of a direction given by respondent No.2 on 22.11.1988. He therefore, submits that the orders of respondents cannot be sustained in law.

Per contra, Sri V.S.K.Rama Rao, submitted that since the penalty of withholding of increment takes within its sweep both the categories of punishments, namely, withholding of increment with cumulative effect and without cumulative effect and that the same

is included in the category of minor penalties which do not require holding of a formal enquiry, the action of the respondent No.3 in not holding enquiry cannot be said to be illegal. The learned counsel further submitted that the judgment of the Supreme Court i n **Kulwant Singh Gill** (1 supra) having been rendered much subsequent to the orders passed by respondent No.3, the said judgment cannot be applied to the present case. Alternatively the learned counsel also submitted that during the pendancy of appeal the second respondent, having realized the illegality committed by respondent No.3 ordered for holding of an enquiry and that accordingly an enquiry was held by the Chief Inspector who submitted a report on the basis of which respondent No.2 has passed the final orders on 29.6.1991. He therefore, submits that the order does not suffer from any illegality warranting interference by this Court.

It is not disputed by the learned counsel for the respondents that the third respondent did not conduct departmental enquiry before inflicting punishment on Sri Madhusudhan. It is also not in dispute that though the C.C.A. Regulations of the Corporation do not provide for the procedure of holding domestic enquiry in cases where punishment of withholding of increment whether cumulative or otherwise are imposed, the Supreme Court in **Kulwant Singh Gill (1 supra)** held that where the withholding of increment is with cumulative effect it is incumbent upon the employer to hold an enquiry before imposing the penalty. The learned counsel for respondents 2 and 3 however submitted that since the appellate

authority have cured the defect by getting an enquiry held, the contention that the principles of natural justice are violated is not available to the employee. Having carefully considered this contention, I am unable to accept the same.

The learned counsel also further submitted that since the said case was decided after the third respondent passed the order, the said judgment cannot be applied.

In view of these submissions, two points arise for consideration; namely, 1) whether holding of enquiry at the instance of second respondent during the pendancy of appeal has cured the defect of not holding of enquiry by third respondent before passing final order imposing penalty on Sri Madhusudhan, and 2) whether the judgment of the Supreme Court in **Khulwant Singh Gill** (1 supra) has no application to the present case.

Re-Point No.1:

A perusal of the award of the Labour Court no doubt shows that though the Corporation has taken a stand in the counter affidavit that no enquiry was held, the Labour Court however recorded certain facts which read as under:

> " As per Ex.W-10, the Divisional Manager, Koti Terminus, Hyderabad directed the Depot Manager, APSRTC, Musheerabad to refer to CCA Regulations and take correct action in this case. The enquiry conducted by the Chief Inspector, Barkatpura is only a preliminary enquiry, based on which specific charges were framed. The letter addressed is Ex.W-10 dated 22.11.1988. In pursuance of the directions given in Ex.W10, the Chief Inspector (Enquiries) was directed to enquire into the charges against the petitioner and file his report. Therefore, the Chief Inspector (Enquiries),

Secunderabad Division enquired the witnesses in this case and examined Moinuddin Khan, the then A.M.F., Musheerabad depot whose statement is marked as Ex.M-18 and G.Ramachandrudu, Security Guard whose statement is marked as M-19 on 18.8.1989 and on 2.9.1989 the enquiry officer enquired D.Viswanathan, leading hand of Musheerabad Depot and recorded his statement under Ex.M-20 and also examined B.Chandraiah, Helper of Musheerabad Depot on 24.11.1989 and his statement is marked as Ex.M21 and also examined A.P.M., Krishnaiah, Helper of Kushaiguda depot on 24.11.1989 and his statement is marked as Ex.M22 and on the same day, the enquiry officer examined M.Chukkaiah, Mechanic of Musheerabad depot and his statement is marked as Ex.M23 and Sri S.Durgesh, Cleaner of Musheerabad Depot was examined on 3.1.1990 and his statement is marked as Ex.M24 and Sri Madhusudhan, the Mechanic of Musheerabad depot was also examined and his statement is marked as Ex.M.25. Therefore, from Exs.M18 to M-25, it is clear that a regular domestic enquiry was conducted by the Chief Inspector (Enquiries) who is the enquiry officer and he has recorded the statements of witnesses recorded under Exs.M.18 to M-25. Therefore, the contention of the petitioner that enquiry was not conducted against the workman has no force and after receipt of Ex.W-10 letter from the Divisional Manager, Koti Terminus, Hyderabad addressed to the Depot Manager, APSRTC, Musheerabad depot, a regular enquiry was conducted as per the statements of witnesses recorded under Exs.M-18 to M-25, which are subsequent to Ex.W-10 letter."

From the facts recorded by the Labour Court it appears that the second respondent through his letter dated 22.11.1988 directed the Chief Inspector (Enquiries) to hold an enquiry into the charges and accordingly the Chief Inspector (Enquiries) examined certain witnesses and he appeared to have sent a report to the second respondent – appellate authority. Be that as it may, a perusal of the order dated 29.6.1991 of respondent No.2 shows that he has not adverted to any of the material connected with the said enquiry

or the report of the Chief Inspector (Enquiries). On the other hand the second respondent merely stated as under:

> " After perusing the explanation submitted by the Mechanic to the charge sheet, the Depot Manager, Musheerabad Depot issued show cause notice No.01/138(27)/87-MSRD dated 26.2.1988 proposing the penalty of reduction in pay by two incremental stages for a period of four years which shall have the effect of postponing his future increments. Accordingly the Depot Manager, Musheerabad depot orders. Authority had arrived to the conclusion by assumption and holding guilty of the charges with prejudiced mind. He requests to set aside the punishment.
>
> Perused the entire case. The punishment imposed by the Depot Manager, Musheerabad is just and proper. However, purely on humanitarian grounds the punishment is modified to the extent shown below:
>
> His pay be reduced by two incremental stages for a period of two years which shall have the effect of postponing his future increments." _

It is thus clear that the holding of enquiry during the pendency of appeal was reduced to a mere formality as the second respondent failed to consider the material or the report of the enquiry officer. I am, therefore, of the view that holding of enquiry during the pendency of appeal had no effect at all and the same has not cured the fundamental illegality committed by the third respondent who failed to hold enquiry. This point is answered accordingly.

_

Re-Point No.2:

It is no doubt true that by the time the third respondent passed the order imposing penalty on Madhusudhan through his order dated 22.4.1988 the judgment of Supreme Court in **Khulwant**

Singh Gill (1 supra) did not exist. However the said judgment was rendered when the appeal filed by the Union before the second respondent was pending and the appeal was infact disposed of on 29.6.1991 while the judgment of Supreme Court was rendered on 13.9.1990. Even if the Corporation takes shelter under the fact that the law was not declared on the date of the order passed by the third respondent such an excuse is not available in relation to the appeal. Nothing prevented the second respondent from remitting the matter to the third respondent for holding the enquiry. Instead of doing that the second respondent appeared to have gone through the motions of getting an enquiry held and not considering the enquiry report. Indeed, the judgment of the Supreme Court cannot be construed as having the effect of prospective ruling. In my view the effect of the judgment of the Supreme Court is that it has merely stated the position as it existed. Though the regulation does not provide for holding of an enquiry, in case of withholding of increments, the legal position is well settled that any order which causes adverse civil consequences cannot be passed without affording a reasonable opportunity to the person likely to be affected. See **State of Orissa vs. Binapani Devi**[2], **A.K.Kraipak and Others vs. Union of India**[3], **Maneka Gandhi vs. Union of India**[4].

For these reasons, I am unable to agree with the contention of the learned counsel for the Corporation. The point No.2 is

accordingly answered in favour of the petitioner.

The learned counsel for the Corporation however, made a submission that even if the imposition of penalty of withholding of increment with cumulative effect cannot be sustained, the Court may convert the same into one of withholding of increment without cumulative effect. I have considered this submission in the light of the order passed by the third respondent. It is evident from this order that the third respondent has not given any reasons whatsoever to impose the punishment. The order is cryptic and laconic and in the absence of any cogent reasons supporting the imposition of penalty, no punishment can be awarded. Therefore, this contention is also rejected.

For the aforementioned reasons, the writ petition is allowed. The punishment imposed by respondent No.3 and as confirmed by respondent No.2 with modification is set aside. Sri Madhusudhan, Mechanic (E.No.38311), Musheerabad Depot is entitled to all the consequential benefits.

C.V.NAGARJUNA REDDY,J

Date:23.02.2007
mdaa

---

[1] (1991) 1 SCC 504
[2] AIR 1967 SC 1269
[3] 1969(2) SCC 262
[4] (1978) 1 SCC 248